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No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2003

IKECHUKWU OPARA, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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Question Presented

In view of the fact that deportation is mandatory upon conviction of an aggravated felony, did the trial court's failure to so advise petitioner and did trial counsel's on-the-record statement that deportation was not likely constitute a violation of due process of law and ineffective assistance of counsel, in violation of the Fifth and Sixth Amendments to the United States Constitution?

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Parties

Ikechukwu Opara, petitioner, and United States of America, respondent.

Opinions Below

Petitioner's conviction was affirmed by an unpublished memorandum decision of the Court of Appeals for the Ninth Circuit on June 11, 2003. (See Appendix) A timely filed petition for rehearing and rehearing en banc was denied by the Court of Appeals for the Ninth Circuit on July 24, 2003. (See Appendix)

Statement of Jurisdiction

The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

Constitutional and Statutory Authorities Invoked

United States Constitution, Fifth and Sixth Amendments, 8 U.S.C.§1101(43)(G)(M), 8 U.S.C. §1227, 8 U.S.C. §1229b, Fed.R.Crim.Pro. 11. See

Appendix for verbatim statement of these authorities.

Statement of Facts and Case

On March 25, 1997, the United States Attorney for the Northern District of California filed an information charging petitioner, IKECHUKWU OPARA, a Nigerian national, with a violation of 18 U.S.C. §1029(a)(2), illegal use of credit cards. On March 27, 1997, petitioner entered a plea of guilty. At the hearing on the change of plea, there was no discussion of whether or not petitioner's plea would have any immigration consequences. (Gov't.Ex. Rec. 3-15)

An initial sentencing hearing was held on October 6, 1997. At that hearing, a dispute arose over whether or not petitioner would be deported as a consequence of his plea. Petitioner's trial counsel told the court that he was "not an immigration lawyer" but that he had talked to another lawyer who was who had advised that

petitioner "is not at all deportable." Petitioner's trial counsel indicated to the district court that he "was not...qualified to give advice on the immigration status." (Supp.Ex.Rec. 3-4)

The government, which had taken the position that petitioner was deportable, stated that it was its belief that petitioner was deportable because the crime petitioner had pleaded guilty to was one of moral turpitude involving a loss of more than $10,000. (Supp.Ex.Rec.4) Petitioner's counsel responded, arguing that the offense petitioner had pleaded guilty to was "not an automatic deportation." (Supp.Ex.Rec. 5)

The district court indicated that it did not know whether or not the offense that petitioner had pleaded guilty to would automatically lead to his deportation. "I think I would just need to know whether he's being deported or not." (Supp.Ex.Rec. 6) After some further discussion of petitioner's background and family, the trial court put the matter over for sentencing, in part,

because "I might as well wait and impose the sentence...until I find out whether he's going to be deported or not." (Supp.Ex.Rec. 23)

When the matter came back on the court's calendar for sentencing on January 12, 1998, petitioner's counsel maintained that there was no certainty about petitioner's deportation. "Mr. Opara may be deported; he may not be deported." (Gov't.Ex. Rec. 19) When asked by the court why petitioner might not be deported, trial counsel responded that, "the fact of a conviction, in and of itself, does not mean that...they necessarily will institute deportation proceedings, or...that they will deport him." (Gov't.Ex. Rec. 20) The prosecutor, while disclaiming "a hundred percent certain[ty]." once again took the position that petitioner was, as a result of his plea to an aggravated felony, "per se deportable." (*Ibid.*)

The trial court did not resolve the dispute on the likelihood of deportation and did not advise petitioner, or even express an opinion on the subject. Petitioner was then sentenced to

eight months imprisonment, to be followed by three years supervised release, restitution, and a special assessment of $100.

Argument

I.

In View of the Fact that Deportation is a Mandatory Consequence for a Non-Citizen Convicted of an Aggravated Felony, Trial Counsel's Representation to the Contrary and the Trial Court's Failure to Properly Advise Petitioner Violated Petitioner's Right to Effective Assistance of Counsel and Due Process of Law Guaranteed by the Fifth and Sixth Amendments of the United States Constitution

A.

Deportation is Mandatory and Automatic for a Non-Citizen Convicted of an Aggravated Felony

Credit card fraud, a violation of 18 U.S.C. §1029(a)(2), the section that petitioner pleaded guilty to, is categorized as an aggravated felony under 8 U.S.C. §1101 (43)(G)(M) because, in

petitioner's case, the loss was involved an amount in excess of $10,000. Section 1227 of Title 8 makes a person convicted of an aggravated felony subject to deportation.[1] Waiver of deportation is authorized only in cases of presidential pardon. (8 U.S.C. §1101(a) (43)(v).)

Prior to 1996, an alien who was deportable as a result of a conviction of specified crimes could receive a discretionary waiver of deportation from the Attorney General. (§212(c), codified at 8 U.S.C. §1182(c).) When Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996, it removed the authority of the Attorney General to grant such waivers. As it presently reads, 8 U.S.C. §1229b states, in pertinent part that, "[t]he Attorney General may cancel removal in the case of an alien who is inadmissible or

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1 "Any alien who -(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and (II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable....(iii) Aggravated felony. Any alien who is convicted of an aggravated felony at any time after admission is deportable."

deportable from the United States *if* the alien...(3) has not been convicted of any *aggravated felony.*" (emphasis added)

> "Under the new §1229b, this conviction is a *per se bar to cancellation of deportation.* Section 1229b allows for cancellation of deportation only if the detainee 'has not been convicted of' an 'aggravated felony.'[Citations]." (*United States v. Zarate-Martinez* (9th Cir. 1998) 133 F.3d 1194, 1199.)

B.

Under 8 U.S.C. §§1101, 1227, 1229b, Deportation is No Longer a Collateral Consequence of a Non-Citizen's Conviction of an Aggravated Felony

At the outset, petitioner concedes that there are numerous circuit court cases holding that deportation is a "collateral," not a "direct," consequence of a plea of guilty and that under Rule 11, the trial court need not advise a defendant of the deportation consequences of the entry of plea. (See, for example, *United States v. Chavez-Huerto* (9th Cir.1992) 972 F.2d 1087, 1089;

United States v. Campbell (11th Cir.1985) 778 F.2d 764, 767; *United States v. Russell* (D.C.Cir.1982) 686 F.2d 35, 41.) There is no decision from this Court, however, which so holds. It is petitioner's contention that the rationale of those cases has been both undermined and superseded by the new immigration laws enacted as part of AEDPA which make deportation an inexorable and automatic consequence of the entry of a plea of guilty to an aggravated felony.

Regardless of whether one labels deportation as a "direct" or "collateral" consequence of plea of guilty, there is no dispute that it is a severe and harsh consequence. (*Harisiades v. Shaughnessy* (1952) 342 U.S. 580; *Mahler v. Eby* (1924) 264 U.S. 32, 39: *United States v. Campbell, supra*, 778 F.2d at 769.) Deportation is "a life sentence of banishment." (*Jordan v. De George* (1951) 341 U.S. 223, 232, Jackson, J., dissenting.) As Justice Brandeis noted in *Ng Fung Ho v. White* (1922) 259 U.S. 276, deportation not only results in exclusion from one's chosen

country, "[i]t may result also in loss of both property and life, or of all that makes life worth living." (*Id.* 259 U.S. at 284.)

Informing the accused of the primary consequences of a plea of guilty is an integral and indispensable part of the entry of a plea. (Fed.R.Crim.Pro. 11; *Boykin v. Alabama* (1969) 395 U.S. 238; *Libretti v. United States* (1995) 516 U.S. 29, 50.) "What is at stake for an accused facing...imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence." (*Boykin v. Alabama, supra,* 395 U.S. at 244.) Although Rule 11(c)(1) specifically requires a trial judge to advise a defendant of upon entering a plea of the minimum and maximum possible sentences[2]

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2 "Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

under the relevant statues and their interplay with the guidelines, the mandated advisal must be interpreted in the light of the purpose of the rule. As the this Court noted in *Libretti, supra*, "Rule 11(f) is intended to ensure that a defendant's 'plea of guilty' is *knowing* and voluntary." (*Id.* 516 U.S. at 42.)(emphasis added) "It is beyond dispute that a guilty plea must be *both knowing and voluntary*." (*Parke v. Raley* (1992) 506 U.S. 20, 29.)(emphasis added)

> "The purpose of the]knowing and voluntary' inquiry, by contrast, is to determine whether the defendant actually does understand the significance and consequences of a particular decision..." (*Godinez v. Moran* (1993) 509 U.S. 389, 401, fn. 12.)

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(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, including the effect of any special parole or supervised release term, the fact that the court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances, and, when applicable, that the court may also order the defendant to make restitution to any victim of the offense..."

In *Meachum v. Longval* (1983) 460 U.S. 1098, Chief Justice Rehnquist observed that, "[t]his Court has often stressed the importance of providing criminal defendants with full information." (*Id.* 460 U.S. at 1101, Rehnquist, C.J., dissenting.) Rule 11 does not itself speak in terms of "direct" or "collateral" consequences of a plea. Although the high court has ruled that some consequences of a plea are not within the ambit of the advisal requirements of Rule 11 (See, for example, *Hill v. Lockhart* (1985) 474 U.S. 52), this Court has not specifically endorsed the "direct" and "collateral" dichotomy used by the various courts of appeal.

The distinction between the two categories is necessarily an artificial and arbitrary one. The consequences of pleading guilty to a criminal offense do not naturally fall in to such neat classifications, but rather are arrayed along a continuum, some being more immediate than others. Designating one consequence as "collateral" and another as "direct" is simply a

judgment call as to which consequences are most closely linked to a plea of guilty. "Direct" is simply a convenient label for defining those sorts of consequences which the courts have deemed essential to inform a defendant in order to obtain a knowing and voluntary plea and "collateral" refers to those consequences which are not as essential, either because they are too speculative, too far removed from gravamen of the criminal charge, or simply too de minimis.

As the Ninth Circuit has observed, the "line between direct consequences, of which the defendant must be warned, and collateral consequences, of which he need not be warned, is not easily drawn." (*Torrey v. Estelle* (9th Cir. 1988) 842 F.2d 234, 236; *United States v. Russell, supra.*)

Of course, the entry of a plea of guilty to a criminal offense has a wide range of potential consequences, from social ostracism and loss of employment to imprisonment and deportation. To be sure, a trial court cannot and should not be compelled to advise a defendant of every

conceivable consequence of a plea of guilty. But along that continuum of consequences, deportation from the country of one's residence must rank close to or equal with the prospect of imprisonment as something a defendant should be informed about when he enters a plea.

Deportation is now an automatic consequence of a plea of guilty to an aggravated felony by a non-citizen. A defendant who so pleads will be deported; the Attorney General has been stripped of any authority to waive deportation. The entry of a judgment order upon conviction of an aggravated felony in a district court is now virtually tantamount to the entry of an order of deportation; one follows inevitably and inexorably from the other. Although the deportation order itself is actually entered under the aegis of the Immigration and Naturalization Service, once the case of a defendant, convicted of an aggravated felony, arrives within the jurisdiction of the INS, the hearing on deportation is a mere formality, with more

ceremony, but no more content, than the stamping of a passport.

The constitution requires that a plea of guilty be both knowing and voluntary. (*Boykin v. Alabama, supra.*) It is an utter fiction to assert that a non-citizen defendant knowingly and voluntarily enters a plea of guilty to an aggravated felony if the plea is entered without the defendant being advised that entering the plea will result in his or her deportation. Failing to advise a defendant that if he enters a plea to an aggravated felony, deportation will follow sentencing, that his plea of guilty will result in his forever being banished from this country, is nothing less than officially sanctioned legal trickery. It is no more accurate to assert that a defendant has knowingly entered a plea to an aggravated felony while he remains uninformed that his plea will result in his deportation than it would be to contend that a home buyer has knowingly purchased a house without being informed that the home he just bought was

directly in the path of a freeway already under construction.

Deportation is part of a continuum of consequences that not only directly flows from the entry of plea, it requires no further act on the part of the defendant to come to fruition. As an inevitable result of his plea to an aggravated felony, a non-citizen will be deported. This Court has the supervisory authority to make advisal of immigration consequences an integral part of the Rule 11 mandate of assuring that a plea is voluntarily and knowingly entered. (*Rand v. Rowland* (9th Cir. 1998) 154 F.3d 952, 959; *United States v. Rubio-Villareal* (9th Cir.1992) 967 F.2d 294, 297; *United States v. Seawell* (9th Cir.1977) 550 F.2d 1159, 1162-63) "This supervisory authority can be exercised when 'necessary to proper judicial administration in the federal system.' [Citation]." (*Rand v. Rowland, supra,* 154 F.3d at 959.) This Court should invoke that supervisory authority to require advisal of the immigration consequences of a plea.

In *Libretti, supra,* this Court observed that it was contemplated by the drafters of Rule 11 that the plea consequences that are enumerated in that rule were not intended to be exclusive or restrictive. Rather, Rule 11 contemplates that "'a judge [would be] free to' inform a defendant about specific consequences that might follow from a plea of guilty if the judge 'fe[lt] a consequence of a plea of guilty in a particular case [would be] likely to be of real significance to the defendant.' [Citation]." (*Id.* 516 U.S. at 50.)

This Court should not tolerate the spectacle of non-citizens pleading to aggravated felonies without knowing that by so doing, they were, in effect, signing their own deportation papers. As the Judge Mikva observed in *United States v. Russell, supra,* "distribution of justice to alien defendants can only be enhanced if the trial courts make sure" that those defendants are warned that there are immigration consequences to their plea. (*Id.* 686 F.2d at 41.)

> "It is extremely troublesome that deportation has never been considered a direct consequence of guilty pleas of the sort that must be brought to the defendant's attention before his plea may be considered voluntary under Rule 11. Aliens form a discrete, easily recognized class of defendants. *They are deported by the same branch of government that brings criminal charges against them,* and in many cases their deportation is a more direct and automatic consequence of conviction than any other sanction." (*Ibid.*)(emphasis added)

C.

Appointed Trial Counsel's Assurance to Petitioner that a Plea to an Aggravated Felony Would Not Automatically Result in Deportation Denied Petitioner his Right to Effective Assistance of Counsel Guaranteed by the Sixth Amendment to the United States Constitution

When an allegation is made that trial counsel provided ineffective assistance of counsel in a case where a defendant enters a plea of

guilty, the standard of review is similar to that promulgated in *Strickland v. Washington* (1984) 466 U.S. 668, 687.) In *Hill v. Lockhart, supra*, this court held that "[w]here...a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.' [Citation]." (*Id.* 474 U.S. at 56.)

Even if this Court finds that the district courts have no obligation to advise defendants of the immigration consequences at the time of the entry of plea, it would not be inconsistent with such a holding to mandate that counsel correctly so advise his client. An attorney's duty to advise his client is broader in scope and different in purpose that the advisal by the court mandated by Rule 11. An attorney is duty bound to advise a client whether or not it would be in his or her best interest to plead guilty or to go to trial. (*United States v. Blaylock* (9th Cir. 1994) 20 F.3d

1458; *United States ex rel. Caruso v. Zelinsky* (3rd Cir.1982) 689 F.2d 435, 438.) On the other hand, not only is the advisability of a plea *dehors* of the district court's responsibilities, Rule 11 specifically forbids the trial court from taking part in the plea bargaining process. What may be collateral to the court's duties is, in this instance, central to the responsibilities of an attorney.

It is "widely recognized as a violation of an attorney's professional duty to his client not to advise him of the immigration consequences of a plea or conviction." (*Magana-Pizano v. I.N.S.* (9th Cir. 1999) 200 F.3d 603, 612.) As a matter of simple logic, a non-citizen would naturally want to consider the immigration consequences of a conviction before agreeing to enter a plea of guilty. (*Tasios v. Reno* (4th Cir. 2000) 2000 WL 223333*7.)

Moreover, the case at bar is not simply a case where the record is silent on whether or not trial counsel advised petitioner that his plea to an

aggravated felony would lead to his deportation. Rather, the record in this case is strewn with multiple representations and assurances made by petitioner's trial counsel that deportation was not only not automatic, it was not even probable. Counsel stated in open court that Mr. Opara "may be deported; he may not be deported." (Gov't.Ex. Rec. 19) and that "the fact of a conviction, in and of itself, does not mean that...they necessarily will institute deportation proceedings, or...that they will deport him." (Gov't.Ex. Rec. 20)

The courts have drawn a distinction between failure to advise on a "collateral" consequence, and affirmative misrepresentations[3] made by an attorney concerning "collateral" consequences of a plea to a criminal charge. (*Ostrander v. Green* (4th Cir. 1995) 46 F.3d 347, 355; *Downs-Morgan v. United States* (11th Cir.

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[3] Using that word to connote a mistake, not fraud.

1985) 765 F.2d 1534; *Strader v. Garrison* (4th Cir.1979) 611 F.2d 61.)

> "Ordinarily, an attorney need not advise his client of the myriad 'collateral consequences' of pleading guilty. [Citation] However, where the client asks for advice about a 'collateral consequence' and relies upon it in deciding whether to plead guilty, the attorney must not grossly misinform his client about the law." (*Ostrander v. Green, supra,* 46 F.3d at 355.)

In *Downs-Morgan v. United States, supra,* the court held that counsel's incorrect advise about the immigration consequences of a plea could constitute incompetence of counsel. "[C]ertain considerations are so important that misinformation from counsel may render the guilty plea constitutionally uninformed." (*Id.* 765 F.2d at 1541; *United States v. Gajendragadkar* (4th Cir. 1998) 149 F.3d 1171 (unpublished), ["[C]ounsel['s] erroneous[] assur[ance]...that he would not be subject to deportation now or in the future...was constitutionally deficient."].)

Similarly, in *Briscoe v. United States* (D.C.Cir.1970) 432 F.2d 1351, the D.C. Circuit held that "Under appropriate circumstances the fact that a defendant has been misled as to consequence of deportability may render his guilty plea subject to attack." (*Id.* 432 F.2d at 1353.)

To make matters worse, despite the fact that the United States Attorney in this case offered his opinion that the conviction would result in petitioner's deportation, he disclaimed certainty about his opinion and the *trial court made no effort whatsoever* to resolve the issue.

D.

Conclusion

As the law now stands, deportation is an automatic, inexorable, and inevitable consequence of a non-citizen's plea of guilty to an aggravated felony. Given the vagaries of the sentencing guidelines, it is even more certain than a jail sentence. The purpose of voir diring a defendant who pleads guilty is to make sure that

the defendant understands what is going to happen to him or her as a result of the plea. A plea "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." (*McCarthy v. United States* (1969) 394 U.S. 459, 466.) A plea "not only must be voluntary but must be [a] knowing, intelligent ac[t] done with sufficient awareness of the relevant circumstances and likely consequences." (*Brady, supra*, 397 U.S., at 748.)

Whatever justification there might have been in the past for categorizing deportation as collateral to the criminal proceedings, where the discretion available to be exercised by the Attorney General made the specter of deportation only a possibility, not a certainty, under the facts of this case, and the law as it now stands, that reasoning is no longer operative. Due process is not a static concept, unyielding to time and changed circumstances. (*Pacific Mut. Life Ins. Co. v. Haslip* (1991) 499 U.S. 1, 60.) "Due process is not a fixed notion. Procedural rules, 'even

ancient ones, must satisfy contemporary notions of due process.'[Citation]." (*Ibid.*)

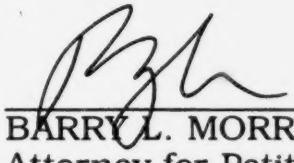
There are approximately 10,000,000 resident aliens in the United States. They are entitled to be informed by the court, should they get in trouble with the law and be faced with the decision of whether or not to plead guilty to an aggravated felony, that if they plead guilty, they will be deported. It's only fair. The core "concept of due process [is] its demand[] for fundamental fairness." (*Schad v. Arizona* (1991) 501 U.S. 624, 637.)

Whatever might be said about the responsibility of the court to inform the defendant of the deportation consequences of pleading to an aggravated felony, there should be no serious question that an attorney representing a non-citizen has a duty to so advise his client. More specifically, given the fundamental importance of deportation, at a minimum, it is *outside* "the range of competence demanded of attorneys in criminal cases" (*Hill v. Lockhart* 474 U.S. at 56) to

assure a client that deportation is neither mandatory nor probable when it will, in fact, be imposed as an automatic consequence of the plea. (*Magana-Pizano v. I.N.S.*, *supra*, 200 F.3d at 612; *Downs-Morgan v. United States*, *supra*.)

Petitioner's conviction must be reversed. The matter should be remanded to the district court for an evidentiary hearing on the question of whether or not petitioner was prejudiced by the failure of court and counsel to advise him as to the immigration consequences of his entry of plea. (*La Crosse v. Kernan* (9th Cir. 2000) 2000 WL 432414*5; *Turner v. Marshall* (9th Cir.1995) 63 F.3d 807, 815.)

Dated: October 8, 2003



BARRY L. MORRIS
Attorney for Petitioner
IKECHUKWU OPARA,

Appendix

In The United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA,

No. 98-10474

Plaintiff-Appellee,

v.

IKECHUKWU "IKE" OPARA,

Defendant-Petitioner./

Ikechukwu Opara's appeal is DISMISSED. He failed to raise the issue he now seeks to appeal before the district court and has therefore waived them. IT IS SO ORDERED.

James C. HILL, Thomas G. NELSON, Michael D. HAWKINS

Dated; June 11, 2003

Proof of Service by Mail

Petition for Certiorari

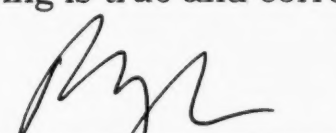
I, Barry L. Morris, declare that I am a citizen of the United States of America, over the age of 18 years; my business address and place of business is 1260 B Street, Hayward, California, 94541; and I am not a party to the within action. On the date shown below, I deposited a true copy of the above-entitled document(s) in the mail in the City of Hayward by placing said document(s) in a sealed envelope with postage thereon fully prepaid and addressed as follows:

Ben Burch
Assistant United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, DC 20530-0001

Executed on March 8. 2004
Hayward, California

I declare under penalty of perjury that the foregoing is true and correct.



BARRY L. MORRIS

In The United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA,

No. 98-10474

Plaintiff-Appellee,

v.

IKECHUKWU "IKE" OPARA,

Defendant-Petitioner./

The petition for rehearing & the petition for rehearing en banc are DENIED.

James C. HILL, Thomas G. NELSON, Michael D. HAWKINS

Dated: July 24, 2003

The Fifth Amendment to the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

8 U.S.C.§1101(43)(G)(M)

(43) The term "aggravated felony" means:...

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one

(M) an offense that
(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000;

(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

8 U.S.C. §1227

(a) Classes of deportable

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable

(1) Inadmissible at time of entry or of adjustment of status
violates

(A) Inadmissible
Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is

(B) Present in violation of
Any alien who is present in the United States in violation of this chapter or any other law of the United States

(C) Violated nonimmigrant status or condition of
(i) Nonimmigrant status
Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status, is
(ii) Violators of conditions of
Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 1182(g) of this title is deportable.

(D) Termination of conditional permanent residence
(i) In
Any alien with permanent resident status on a conditional basis under section 1186a of this title (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 1186b of this title (relating to

conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is

(ii)

Clause (i) shall not apply in the cases described in section 1186a(c)(4) of this title (relating to certain hardship

(E)

(i) In

Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the

States in violation of law is

(ii) Special rule in the case of family reunification

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act.of 1990), was physically present in the seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of

(iii) Waiver

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of

(i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the

alien's spouse, parent, son, or daughter (F) Repealed. Pub. L. 104-208, div. C, title VI, 671(d)(1)(C), Sept. 30, 1996, 110 Stat. 3009-723

(G) Marriage

An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 1182(a)(6)(C)(i) of this title) and to be in the United States in violation of this chapter (within the meaning of subparagraph (B)) if

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the of evading any provisions of the immigration laws, or (ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the admission as an

(H) Waiver authorized for certain misrepresentations...

(iii) Aggravated

Any alien who is convicted of an aggravated felony at any time after admission is

8 U.S.C. §1229b

(a) Cancellation of removal for certain permanent residents

The Attorney General may cancel removal in the case of an alienwho is inadmissible or deportable from the United States if the alien

(1) has been an alien lawfully admitted for permanent residence for not less than 5

(2) has resided in the United States continuously for 7 years after having been admitted in any status,

(3) *has not been convicted of any aggravated felony.* (emphasis added)

Federal Rule of Criminal Procedure 11

(a) Entering a Plea.

(1) *In General* . A defendant may plead guilty, not guilty, or (with the court's consent) nolo contendere.

(2) *Conditional Plea* . With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) *Nolo Contendere Plea* . Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) *Failure to Enter a Plea* . If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) *Advising and Questioning the Defendant*

Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel--and if necessary have the court appoint counsel--at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) the court's obligation to apply the Sentencing Guidelines, and the court's discretion to depart from those guidelines under some circumstances; and

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.
(2) *Ensuring That a Plea Is Voluntary* .Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).
(3) *Determining the Factual Basis for a Plea* .Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.
□
(c) Plea Agreement Procedure.
(1) *In General* .An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:
(A) not bring, or will move to dismiss other charges;
(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or
(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) *Disclosing a Plea Agreement* .The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.
(3) *Judicial Consideration of a Plea Agreement*
(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report. (B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.
(4) *Accepting a Plea Agreement* .If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.
(5) *Rejecting a Plea Agreement* .If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):
(A) inform the parties that the court rejects the plea agreement;
(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant the opportunity to withdraw the plea; and
(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.
□
(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or
(2) after the court accepts the plea, but before it imposes sentence if:
(A) the court rejects a plea agreement under Rule 11(c)(5); or
(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) Finality of a Guilty or Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.